

Caveat Emptor. Property and Religious Tumult in the Fourth Century

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1. Lactantius *De mortibus persecutorum* 48.7-9

Atque hoc insuper in persona Christianorum statuendum esse censuimus, quod, si eadem loca, ad quae antea convenire consuerant, de quibus etiam datis ad officium tuum litteris certa antebac forma fuerat comprehensa, priore tempore aliqui vel a fisco nostro vel ab alio quocumque videntur esse mercati, eadem Christianis sine pecunia et sine ulla pretii petitione, postposita omni frustratione atque ambiguitate restituant, qui etiam dono fuerunt consecuti, eadem similiter isdem Christianis quantocius reddant, etiam vel hi, qui emerunt vel qui dono fuerunt consecuti, si petiverint de nostra benivolentia aliquid, vicarium postulent, quo et ipsis per nostram clementiam consulatur. Quae omnia corpori Christianorum protinus per intercessionem tuam ac sine mora tradi oportebit. Et quoniam idem Christiani non [in] ea loca tantum, ad quae convenire consuerunt, sed alia etiam habuisse noscuntur ad ius corporis eorum, id est ecclesiarum, non hominum singulorum, pertinentia, ea omnia lege, quam superius comprehendimus, citra ullam prorsus ambiguitatem vel controversiam isdem Christianis, id est corpori et conventiculis eorum reddi iubebis, supra dicta scilicet ratione servata, ut ii, qui eadem sine pretio sicut diximus restituant, indemnitate de nostra benivolentia sperent. (Text from Städele, A. 2003. *Laktanz: De mortibus persecutorum*; lateinisch-deutsch. Turnhout: Brepols Publishers)

And we have resolved that this, moreover, must be ordered in the case of the Christians: that if at an earlier time some people appear to have purchased from our fiscus or anyone else the same places at which Christians had previously been accustomed to assemble, concerning which a particular procedure had formerly been described in letters given to your office, let them restore the same places to the Christians without payment and without any request for the price, with all frustration and uncertainty laid aside. Even those who have obtained [these places] as a gift are to similarly return the same places to the same Christians as quickly as possible. And those who have purchased or obtained [these places] as a gift, if they have sought something from Our Benevolence, let them ask the *vicarius*, that consideration may also be taken for them through Our Clemency. It will be fitting that all these places be handed over to the community of Christians immediately through your intercession and without delay. And because the same Christians are known to have

possessed not only those places at which they were accustomed to assemble, but also other things pertaining to the right of their community, that is of the churches, not of individual persons, by the law which we have previously described, you will order all those things to be returned to the same Christians without any uncertainty or dispute, that is to their community and assemblies. Certainly the procedure stated above will be maintained, that those who restore the same things without the price, just as we have said, may hope for indemnity from Our Benevolence. (Translation my own)

2. Tacitus *Histories* 1.20

Bis et vicies milies sestertium donationibus Nero effuderat: appellari singulos iussit, decuma parte liberalitatis apud quemque eorum relicta...exactioni triginta equites Romani praepositi, novum officii genus et ambitu ac numero onerosum: ubique hasta et sector, et inquieta urbs actionibus. (Text from Heubner 1978 Teubner)

Nero had squandered in lavish presents 2,200 million sesterces. Galba gave instructions that these moneys should be recovered from the individual recipients, leaving each a tithe of their original gift...Thirty of the knights were entrusted with the duty of recovering the money. This commission, for which there was no precedent, proved burdensome owing to the numbers to receive bribes. Every quarter was beset with sales and brokers, and unsettled by lawsuits. (Translation from Fyfe and Levene 1997, Oxford World's Classics)

3. Code of Justinian 4.46.2.1 (Diocletian, Maximian to Atinia Plotiana)

Sin autem venditio nulla iusta auctoritate praesidis praecedente facta est, hanc ratam haberi iura non concedunt, idque quod frustra gestum est revocari oportet, ita ut indemnitati tributorum omnibus modis consulatur. Quae omnia tractari convenit praesente eo, quem emptorem extitisse proponis. (Text from Krueger, 16th edition)

But if the sale occurred without any previous proper authority of the governor, the laws do not allow this to be considered valid, and what was done in vain must be revoked in such a way that consideration be taken in every way for the protection (*indemnitas*) of tax revenue. All these matters are to be handled in the presence of the person who you state was the buyer. (Translation from Frier et al. 2016)

4. Codex Theodosianus 11.9.1 (Consantine, 323 CE)

Quoniam decessoris tui litterae missae ad Proculeianum tribunum et magistrum officiorum continent quorundam provincialium mancipia abducta pro pignore sub officio retineri, eo quod vestes canonicas vel equos minime intulerunt, atque haec mancipia neque dominos solutis debitis recepisse neque alios comparasse, veritos ne haec rescinderetur distractio: iubemus duorum mensum spatium ad solvenda debita mancipiorum dominis indulgeri, quo transacto nisi debita fuerint persoluta, firmiter mancipia comparabunt quicumque ad emptionem accesserint. (Text from Mommsen 1905)

Since your predecessor's letters, which were sent to Proculeianus, Tribune and Master of Offices, contain the statement that the slaves of certain provincials had been led away as pledges and were being retained by his office, because said provincials did not pay the clothing and the horses due as regular taxes, that the masters did not recover such slaves by payment of their taxes due, and that other men did not purchase them, since they feared that such a sale would be rescinded, We command that a space of two months shall be conceded to the masters of such slaves for the payment of the taxes due. When this time has elapsed, unless the taxes due have been paid in full, those persons who come to the sale shall purchase such slaves with a valid title. (Translation from Pharr 1952)

5. Symmachus *Relationes* 3.18

Absit a bonis principibus ista sententia, ut quod olim de communi quibusdam tributum est, in iure fisci esse videatur. Nam cum res publica de singulis constet, quod ab ea proficiscitur, fit rursus proprium singulorum. Omnia regitis, sed suum cuique servatis, plusque apud vos iustitia quam licentia valet. Consulite certe munificentiam vestram, an adhuc publica velit existimari, quae in alios transtulistis. Semel honori urbis delata compendia desinunt esse tribuentium, et quod a principio beneficium fuit, usu atque aetate fit debitum. (Text from Seeck 9th edition)

I hope good emperors will not entertain the view that what was in time past granted to individuals from public funds should be regarded as still in the jurisdiction of the exchequer. The state is composed of individuals and once a thing leaves the state it becomes the property of individuals once again. You rule everything but you also preserve for each his own possessions, and justice weighs more with you than lawlessness. Consult your own past generosity and ask it whether it wishes that things which you transferred into the possession of others should be regarded as still the property of the state.

Moneys once and for all handed over to the good conscience of the state cease to belong to those who contributed them, and what from the outset was a free gift becomes by usage and passage of time something owed.
(Translation from Barrow 1973)

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